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MEMORANDUM

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THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT

ACTION

May 8, 1970

FROM: Henry A. Kissinger *HK*SUBJECT: Seabeds Convention to Determine Continental Shelf Boundary
and Seaward RegimeThe Decision Before You

In recent months there has arisen in Defense and State a growing sense of urgency about the need to adopt a U. S. position on an international seabeds convention to determine the boundary of national sovereignty on the continental shelf and the nature of the regime governing the use of the seabeds beyond this boundary.

You are now asked to determine and announce a U.S. position on this convention, based on proposals submitted to you by Defense, Interior, State, and Under Secretary Richardson in his capacity as chairman of the Under Secretaries Committee.

Background

The growing sense of urgency occurs against a background of rapid technological progress toward exploitation of the oceans' wealth, growing concern about offshore pollution, and a rising sentiment of coastal states to advance their interests against the legal regime established by maritime states. It springs from the need to:

- check the resulting proliferation of expansive unilateral claims of exclusive national jurisdiction on the seabeds and the waters above, to which the recent Brazilian and Canadian actions give great impetus;
- establish the proper international climate to resist the resulting restrictions of U. S. military mobility and commerce and to obtain a new law of the sea treaty limiting territorial sea boundaries and assuring free passage through international straits.

Unless you clearly and quickly back international agreements to achieve these two objectives, it is felt that:

- "creeping jurisdiction" will lead coastal states to exclude our emplacement of SOSUS listening devices on the continental slope;
- the establishment of 200-mile territorial boundaries will paralyze our military mobility on the seas and in the air above;

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By *Uk1* NARA, Date 3/27/00

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- expanding unilateral claims will precipitate bitter disputes resulting from our fishing and other activities off foreign shores.

Faced with this critical situation, the proponents of a seabeds convention seek multilateral agreements assuring the orderly use of the oceans for the benefit of all states. The alternatives, they fear, are acquiescence to increasing anarchy on the oceans or forcible protection of our interests. Yet the very effort to reach international agreements on the oceans and seabeds has stimulated the pace of unilateral claims.

Agency Positions

The four agency positions before you agree that the area of the continental shelf from the coast to a 200-meter isobath should be under national sovereignty of the coastal state. (See attached diagram.) They also agree that the area on the abyssal ocean floor beyond the continental margin should be under an international regime. The area of controversy is the continental margin beyond the 200-meter isobath.

The chief differences with respect to this area can be summarized as follows:

Interior: Coastal states should have sovereign rights in the whole area.

State: The area should be an intermediate zone in which coastal states would have exclusive jurisdiction over exploitation and exploration only and in which other activities (including military, by implication) by foreign states would be permitted. Coastal states would pay a 2% royalty on value of resources exploited, to be allocated to an international community fund.

Defense: Exploitation of the seabeds in this area should be under an international authority that would set standards and conditions and allocate royalties to international economic development. Preferential bidding rights to coastal states might be established.

Richardson: This area should be under an international authority like that in Defense's proposal and royalties would similarly be allocated to economic development. But coastal states would have the exclusive right to grant concessions and collect royalties as "trustees of the international community."

Issues

The principal rationale of the positions of Defense, Richardson, and State is the same. There are three basic issues upon which they and Interior differ.

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I. Should the US support a seabeds convention that would restrict the authority of coastal states on the continental margin beyond the 200-meter isobath?

Yes (according to Defense, Richardson, and State)

1. The present Geneva Seabeds Convention of 1958 is legally ambiguous and obsolete and is therefore powerless to check expanding unilateral claims.
2. A new agreement to supplement it is indispensable to check the threat to our security, commercial, and general foreign interests posed by proliferating unilateral claims.
3. Only by renouncing sovereign rights beyond the 200-meter isobath and setting up a generous international regime in the seaward area can the US and other major maritime states gain the adherence of coastal states and developing countries generally to a new law of the sea treaty.

No (according to Interior)

1. The Geneva Convention of 1958 is adequate if interpreted to provide coastal states with sovereign rights over the whole continental margin.
2. Any legal restriction of US sovereign rights over the continental margin off its shores would be tantamount to giving away great potential wealth that is rightfully ours.
3. The way to protect our rights on the high seas is to enforce them.

II. If the US supports a seabeds convention, do we need sovereign rights on the continental margin off our shores in order to enjoy adequate access to its resources for the purposes of national security and commercial benefit?

Yes (according to Interior)

1. Without explicitly assured sovereign rights, the access and profits of American firms may be unduly restricted by an international regime.
2. In the future only ownership of the resources on the entire continental margin will give us the access to oil we need for national defense.

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No (according to Defense, Richardson, and State)

1. Considering the great technological advantage enjoyed by American deep-water petroleum and mining industries, American firms will dominate exploitation of all seabeds for years to come, no matter what authority grants the leases.
2. Considering the interest of an international regime in getting funds for development, it will not want to make drilling unprofitable for American firms.
3. The US will have a dominant part in establishing any international authority and in running it if we initiate the project.
4. If the US initiates the proposal for an international authority, it can negotiate preferential rights for coastal states to protect them against discrimination.
5. The Defense Department says that oil resources beyond the 200-meter isobath off our shores are not needed for national defense.

III. In exploiting the continental margins off foreign shores would US firms be better off dealing with them under a convention that gives coastal states sovereign rights over their margins than if the same areas are under an international regime? (NOTE: 94% of the world's continental margins are off foreign shores.)

Yes (according to Interior)

It is likely to be safer and more profitable to cope with the familiar difficulties and risks of dealing bilaterally with coastal states than to deal with an international regime.

No (according to Defense, Richardson, and State)

In the future US oil firms face a growing risk of expropriation, profit squeezing, and general harassment by coastal states; and these risks will be increased if coastal states are given or allowed to assert ownership of resources on their continental margins. The best protection against their risk is a convention establishing narrow shelf boundaries and an international regime beyond.

* * * * *

If, after considering these issues, you should decide that the US does not need another seabeds convention or that it should support a broad boundary of sovereign rights, then Interior's position is the proper one. If you conclude that the US should quickly announce its support for a seabeds convention that would confine sovereign rights on the continental margin to the 200-meter depth boundary and establish an international regime beyond, then the following issues should be considered in determining the US position.

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Although the Department of State has adopted Richardson's position and Interior is inclined to accept State's abandoned position, you may wish to compare the merits of all three of the remaining positions -- Defense, Richardson, and State -- with respect to the issues below.

In choosing between Defense, Richardson, and State it will help to realize that each position, in this order, makes progressively greater concessions to the control by coastal states of the resources of the continental margin beyond the 200-meter isobath off their shores (and, hence, their legal capacity to restrict US activities) and progressively less concession to the international character of the area.

On the other hand, some authorities insist that, in reality and as it appears to most states now, the only reliable distinction between these three positions is whether or not coastal states would have the explicit right to grant leases for exploration and exploitation of resources. (Only Defense would renounce this right beyond the 200-meter line.) According to this view, the difference between Interior and either Richardson's and State's position is largely cosmetic and, in practice, illusory.

* * * * *

IV. Which position will best check the proliferation of unilateral claims and restrictions by coastal states?

Defense believes that only its position, by clearly renouncing coastal-state ownership of resources beyond the 200-meter line, is likely to achieve this purpose. Richardson's and State's positions, it contends, would be tantamount to Interior's since they give coastal states the exclusive authority to grant leases in the area and would therefore encourage expansive claims by coastal states and fail to check creeping jurisdiction.

Richardson relies on "international rules," the "international sovereignty" of the area, and the provision that coastal states should act as "trustees of the international community" to discourage such claims and to check creeping jurisdiction.

State relies only on the definition of the area as an "intermediate" zone in which coastal states have "jurisdiction." (not "sovereign rights") for purposes of exploration and exploitation and in which "other activities" by foreign states would be assured.

V. Which position has the best chance of gaining the adherence of other states to a seabeds convention and a law of the sea treaty that will serve our interests?

State's position can claim the most direct economic appeal to some key coastal states with abundant seabed resources (if they are not concerned about

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exploiting foreign shelves), since it gives the clearest title to these states over the seabed resources off their own shores.

Richardson believes that his position, in making a greater concession to the international character of the area, will be more salable than State's position to the general international community, yet more salable than Defense's position to coastal states because it gives them the right to grant leases.

Defense contends that Richardson's as well as State's concession to coastal-state interests would deprive the US of a basis for resisting the expanding claims and restrictions of coastal states and attracting the necessary number of signatories with the benefits of an assured international regime. It reasons that if concessions to coastal states are needed, they can best be made by providing preferential bidding rights for them.

VI. Which position will best protect American commercial interests off our shores?

Richardson's and State's positions, by giving coastal states the exclusive right to grant leases, would protect US petroleum firms from any possible discrimination by the international authority.

Defense argues that the same objective can be achieved -- and without jeopardizing the international regime -- by giving coastal states preferential bidding rights. In any case, it denies (as only Interior affirms) that an international authority would jeopardize our commercial interests.

VII. Which position will best protect American commercial interests off foreign shores?

Defense maintains that coastal states will tend to nullify any international regime and expand their own jurisdiction to the disadvantage of US firms if they are given management of the resources in the area, as in Richardson's or State's position.

Richardson, however, may give more protection against this danger than State because he explicitly gives greater recognition to international authority in the area.

VIII. Which position is likely to be more acceptable to the Senate?

Richardson's position may have a broader appeal than State's but would also be less vulnerable than Defense's to sentiment against the "giveaway" of "our" resources.

Defense believes that its position provides the President with the soundest, clearest, and most honest basis for taking a striking initiative in international affairs that will carry the Senate with him.

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State's position will have the greatest appeal to Senators who are sympathetic to the oil industry's views on this issue.

IX. Which position is tactically the best to begin with in international negotiations?

Defense argues that if we begin with a position that gives coastal states the right to grant leases over the whole margin, they will have no incentive to accept restrictions of other rights and will prefer to claim maximum control of the margin's resources; whereas, if we start with the maximum restriction of coastal states' sovereign rights to a narrow boundary and hold out an attractive international regime, we will be in a better bargaining position to get an acceptable international agreement by granting concessions to coastal states as a quid pro quo. Thus, in negotiations Defense might be willing to back up to Richardson's position if necessary.

Richardson is willing to back up to State's position in the negotiating process, if necessary; but his position could hardly be negotiated toward Defense.

State's position may be so close to Interior's in practice that in the process of negotiation it would lose its provisions that restrict coastal state sovereignty in the area.

Conclusion

The choice between Interior and the other three positions depends on a basic judgment about international political forces and American interests. I believe that our overriding national security interests militate against Interior's position. Our oil and other commercial interests are not likely to be seriously disadvantaged by any of the other positions, the views of the oil industry notwithstanding.

State's position looks better than Interior's from the standpoint of checking unilateral claims and restrictions, but in practice it seems likely to be tantamount to Interior's position with some window dressing.

The choice between Defense and Richardson depends on a finer judgment concerning the real international effects and Congressional reactions to proposals that are almost identical in rationale but different in form. Defense believes that Richardson's formulation would, in practice, defeat its avowed intent either in the process of negotiation or as a treaty. Richardson believes that his position is more salable internationally and in the Senate.

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I can live with either Defense's or Richardson's position.

Ehrlichman and Whitaker favor State's position since they believe it gives maximum protection to the U.S. in controlling resources on the continental margins of this country while being internationally acceptable.

As soon as you have indicated your choice, I shall prepare a NSDM and a scenario for promulgating your decision.

RECOMMENDATION

That you choose Defense's or Richardson's position on a seabeds convention.

Approve Defense's Position

Approve Richardson's Position

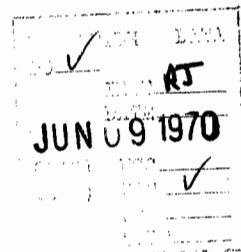
Approve State's Position

Approve Interior's Position

Approve No Position

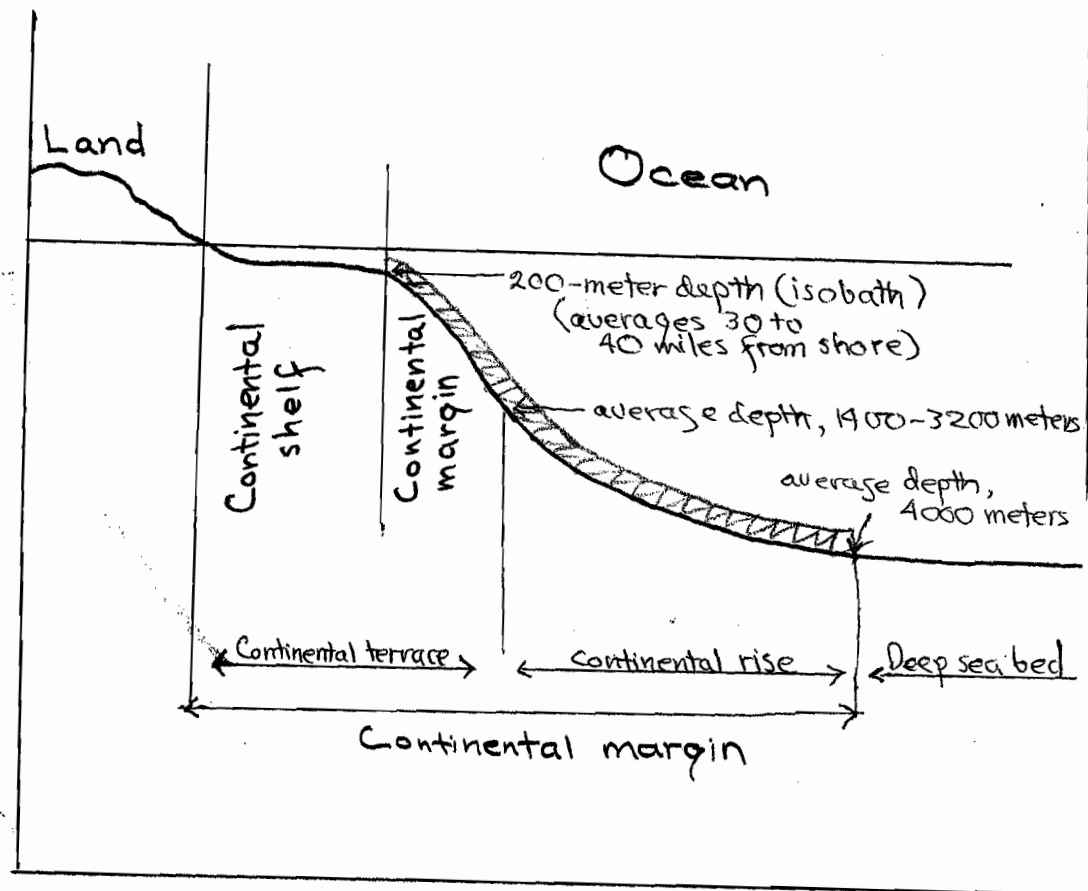
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Attachment/Diagram

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Diagram



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